IN THE

SUPREME COURT OF THE UNITED STATES

No. 76-202

ALFRED JOHN SUPINSKI,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
Seventh Circuit

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Alfred John Supinski, your Petitioner, respectfully prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals, Seventh Circuit, entered in the above-entitled cause on June 17, 1976.

OPINIONS BELOW

This cause was decided by the United States Court of Appeals for the Seventh Circuit on June 17, 1976, see Appendix "A". A Petition for Rehearing or, in the Alternative to Transfer to Court En Banc, Court of Appeals, Seventh Circuit or in the Alternative, to Stay the Mandate Pending Application for Certiorari was timely filed, and, subsequently denied by the Court of Appeals, Seventh Circuit, on July 12, 1976 see Appendix "B".

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on June 17, 1976, with an order denying Petition for Rehearing entered on July 12, 1976. The jurisdiction of this Court is invoked under 28 USC, Section 1254(1) and Rule 19.1(b) of the Rules of the Supreme Court of the United States.

STATEMENT

Petitioner was indicted by the Federal Grand Jury in Count One for violation of Sections 922(a)(5) and 924(a), Title 18, United States Code, in Count Two for violation of Sections 922(a)(5) and 924(a), Title 18, United States Code, in Count III for violation of Section 1202(a)(1), Title 18 Appendix, United States Code, in Count Four for violation of Sections 922(a)(5) and 924(a), Title 18, United States Code, in Count Five for violation of Section 1202(a)(1), Title 18, Appendix, United States Code, and in Count Six for violation of Sections 922(a)(1) and 924(a), Title 18, United States Code.

A trial upon the issues resulted in Petitioner being found guilty upon Counts I, II, III, IV and VI for which he had been indicted; and thereafter Petitioner was sentenced to imprisonment for three years on each of Counts I, II, IV and VI with the sentences to run concurrently and was placed on probation for three years on Count V to run consecutively to the three year term imposed on the other four Counts.

At the close of the trial, the Court denied certain Instructions dealing with entrapment that were offered by the Defendant; see Appendix "C". Said Instructions were refused over Petitioner's objections and no instruction on entrapment was issued at all by the Court despite evidence adduced at trial that the firearms involved were furnished by a government informer and that the sale by Petitioner was to a government agent at the inducement of the government informer. The unrebutted testimony of the Petitioner is set out in Appendix "D". The informer was revealed to be a government informant in the testimony of Dennis McCloskey, the government agent who purchased the guns. This testimony is set out in Appendix E. The Trial Court also overruled Petitioner's Motions to dismiss the indictment, for

judgment of acquittal at the close of all the evidence and to Suppress Evidence all based on the issue of entrapment.

During the trial, upon Petitioner's Motion, the Court refused to compel disclosure of the identity of the government informant which was only revealed in the rebuttal testimony set out in Appendix "E" at the end of the trial. Petitioner's extent of knowledge of the informant's is set out in Appendix "D". The ruling of the Court is set out in Appendix "F".

At the close of trial, upon Petitioner's Motion, the Trial Court refused to direct a judgment of acquittal at the close of all the evidence for failure of the Respondent to conclusively show that the contraband moved in interstate commerce. No evidence was offered as to the guns being moved interstate for the transactions on January 17, 1974 or April 1, 1974. As for the transaction on January 25, 1974, Petitioner's testimony is set out in Appendix "G" and the evidence of James McCoy is set out in Appendix "H". The substance of the testimony deals with whether the Petitioner picked up the contraband in Missouri or Illinois.

At the opening of the trial, Petitioner objected to the method of selecting the venireman and the motion was overruled as is set out in Appendix "I".

During the course of the trial, the Respondent called James Rausch to testify which testimony and objections to it are set out in Appendix "J". Said testimony deals with the identification of one of the items of contraband having been previously stolen.

During the course of the trial, the Respondent introduced into evidence over Petitioner's objections certain documentary evidence which was Plaintiff's exhibits 1, 2, 3 and 6. The contents of the documents and the objections thereto are set out in Appendix "K" and Appendix "L".

REASONS FOR GRANTING THE WRIT

An examination of the statement heretofore set forth in the Petition will reveal that the Petitioner was charged by the United States of America in three counts for the unlicensed interstate sale of firearms, in two counts for participating in the business of firearms in commerce, and in one count for being a convicted felon who affected commerce by receiving, possessing or transporting a firearm.

An examination of Appendix "C" will reveal Petitioner's proposed instructions to the jury on entrapment which instructions were not atypical prior to this Court's decision in *Hampton v. United States*, 44 LW4542. However, the Trial Court rejected all of these proposed instructions and refused to issue an instruction on entrapment at all. An examination of the testimony in Appendix "D" and Appendix "E" reveal that the issue of entrapment has been fairly raised and that an instruction of some sort on entrapment is necessary. When the factual issue of entrapment has been raised, regardless of the source, the jury must be instructed thereon. *Johnson v. United States*, 317 F.2d 127. The decision in *Hampton v. United States*, 44 LW 4542, stated that the predisposition to commit a crime was the controlling factor as to entrapment rather than the governmental misconduct. However, entrapment is still a matter for the jury and they should have been so instructed as to the requisite predisposition to determine whether the Petitioner was entrapped.

Further, it is questionable as to whether or not Petitioner was predisposed to commit a crime. At best, the testimony only showed that he was predisposed to committing an act that happened to be unlawful. There was no showing that he intended to commit a criminal act at the time of the act. Generally, the proposition would be that if an act was intended, and it was criminal, a criminal charge would lie whether or not the party

knew it was unlawful. But here, where the governmental agents all knew that the act was unlawful, and that the Petitioner was predisposed to commit the act because he could make a commission, there should be a further showing that the Petitioner knew the act was unlawful when the idea for the act was implanted by a government agent.

For the same reasons as to why entrapment would lie herein, the Trial Court should have dismissed the indictment, directed a judgment of acquittal at the close of all the evidence, and suppressed all evidence seized as a result of the entrapment. The issues presented above call for an exercise of the Supreme Court's power of supervision to clarify the issue of entrapment.

An examination of Appendices "D", "E", and "F" indicated that the Petitioner knew the first name of the informant and thought he knew the last name and place where the informant's girl friend lived. The Court required Petitioner's counsel to inquire of Petitioner the identity of the informant before the Court would grant disclosure and required Petitioner to call the informant to the stand. Petitioner's knowledge of the informant did not extend to the point at which Petitioner knew the identity of the informant. *Rovario v. United States*, 353 U.S. 53, 77 S.Ct. 623. Further, the Court set an improper condition for disclosing the government informer in that he had to be called to testify runs against the language of *Rovario v. United States*, 353 U.S. 53 which stated that the interviewing of the informer in preparation for trial was a matter for the accused rather than the government to decide. Such a practice is enough departure from the accepted and usual course of judicial proceedings as to call for an exercise of the Supreme Court's power of supervision.

An examination of the transcript reveals no testimony as to the transactions on January 17, or April 1, in 1974 that the firearms moved interstate, only that the Petitioner himself lived in Missouri and that the transactions occurred in Illinois. Testi-

mony as to the January 25, 1974 meeting is set in Appendices "G" and "H". This testimony is in dispute as Petitioner alleges that the guns were always in Illinois and that the agent alleges a conclusion that the firearms had to have been in Missouri prior to the sale in Illinois. The evidence in two of the transactions and the weight of the evidence in the third transaction is such that there is no interstate nexis shown to be sufficient to sustain a conviction upon any count. The only thing shown to move interstate was the Petitioner himself. A conviction upon that ground violates his constitutional privilege to move freely interstate. *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322. A violation of Petitioner's constitutional rights calls for the exercise of the Supreme Court's power of supervision.

An examination of Appendix "I", indicates that Petitioner was only allowed to select jurors in groups and was not allowed to go back and strike jurors from prior groups when later jurors were more acceptable to him. The right of the peremptory challenge is one of the most important rights secured to the accused and that the denial or impairment of such right is reversible error even without showing of prejudice. *Swain v. State of Alabama*, 380 U.S. 202, 85 S.Ct. 824. Such practice herein is enough departure from the accepted and usual course of judicial proceedings as to call for an exercise of the Supreme Court's power of supervision.

An examination of Appendices "K" and "L" indicate that certain documentary evidence was introduced into evidence as to whether or not the Petitioner and two of the witnesses had licenses to deal in firearms and whether Petitioner had had removed his disability to possess firearms. Not being able to cross-examine the deponents violates Petitioner's constitutional right to confrontation of witnesses. Further, the admission of these documents did not comport with Fed. Rules Evid Rule 803 (8)B, Title 28, United States Code, as to hearsay exceptions

which excluded criminal case matters recorded by law enforcement personnel from the hearsay exception. This is the situation in the case at bar. Without this testimony, the case would fail and as such the Petitioner was convicted on excludible hearsay material.

CONCLUSION

Therefore, it is respectfully submitted that this Petition for Writ of Certiorari should be sustained.

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APPENDIX

APPENDIX A

United States Court of Appeals for the Seventh Circuit
Chicago, Illinois 60604

(Argued June 1, 1976)

June 17, 1976

Before

Hon. Wilbur F. Pell, Jr., Circuit Judge
Hon. Robert A. Sprecher, Circuit Judge
Hon. William J. Bauer, Circuit Judge

United States of America, Appellee, No. 76-1098 vs. Alfred John Supinski, Appellant.	Appeal from the United States District Court for the Southern District of Illinois. No. A-CR-75-10

Robert D. Morgan, *Judge*

ORDER

Defendant, Alfred John Supinski, was indicted in six counts for various violations of 18 U.S.C. §§ 922(a)(5), 924(a) and 1202(a)(1), involving the sale of eight separate firearms, his possession of some of them as a convicted felon and engaging in the business of dealing in firearms without a license. A jury acquitted the defendant on one count of possession (Count V) but found him guilty on the other five counts, for which he was sentenced to concurrent three-year terms on four counts, to be followed upon the completion of any parole period by a three-year probation period resulting from a suspended sentence on the fifth count.

Upon appeal defendant has briefed eleven separate issues but upon oral argument has indicated that the three most important issues are: (1) failure to dismiss the indictment because it was based on facts which "were the fruits of evidence illegally seized as the result of an unlawful entrapment"; (2) denial of motion for judgment of acquittal based on unconstitutional application of the statutes; and (3) non-disclosure of an informant's identity.

In *Hampton v. United States*, — U.S. — (April 27, 1976), the Supreme Court reconfirmed that in *United States v. Russell*, 411 U.S. 423 (1973), "[w]e ruled out the possibility that the defense of entrapment could ever be based upon governmental misconduct in a case, such as this one, where the predisposition of the defendant to commit tthe crime was established." Here the defendant testified on his own behalf and repeated several times that he sold the firearms "for the purpose of money" and "I needed some money." His need for money created his disposition to undertake the commission of the crime, not any acts of the government agent to whom he sold the firearms. Under these circumstances of predisposition, it was not error to refuse to suppress the fruits of the gun sales nor was it error to refuse to give a jury instruction on the defense of entrapment.

Several of defendant's arguments appear to be based upon his contention that he was selling the firearms for an informant named Roy Miller rather than for himself. In view of *Huddleston v. United States*, 415 U.S. 814 (1974), holding that the redemption of a firearm from a pawnshop is a sale or disposition, the sale by an agent rather than the principal does not appear to insulate the seller from the commission of the proscribed crime.

Defendant also contends that the firearms were not proved to have moved in interstate commerce. However, there is ample evidence in the record that the defendant told the agent to whom he sold the guns that it would be necessary for him to

pick them up in St. Louis, Missouri, in order to return them to Illinois for sale. Another agent testified that on that occasion he observed the defendant with binoculars both leaving and returning to Illinois on a road that led only to a bridge going to St. Louis. The Supreme Court has continued to give an expansive interpretation of the interstate commerce requirements of the Gun Control Act of 1968. *See Barrett v. United States*, — U.S. — (January 13, 1976).

Finally, defendant argued that the district court erred in refusing to divulge the identity of the informant. Defendant's counsel had refused to follow the lower court's suggestion that he inquire of the defendant whether *he* knew the identity of the informant. Counsel having failed to do that, the court exercised proper discretion in denying defendant's motion to reveal the informant's identity.

We have examined all of the defendant's arguments and find them to be equally without merit.

The judgment of conviction is Affirmed.

APPENDIX B

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

July 12, 1976

Before
Hon. Wilbur F. Pell, Jr., Circuit Judge
Hon. Robert A. Sprecher, Circuit Judge
Hon. William J. Bauer, Circuit Judge

United States of America, Appellee, vs. Alfred John Supinski, Appellant.	Appeal from the United States District Court for the Southern District of Illinois. No. A-CR-75-10 Robert D. Morgan, Judge.

No. 76-1098

On consideration of the petition of the appellant for a rehearing by the Court in the above-entitled appeal, and no member of the panel and no judge in regular active service having requested that a vote be taken on the suggestion for an *en banc* rehearing, and the panel having voted to deny a rehearing.

It Is Ordered that the petition of the appellant for a rehearing in the above-entitled appeal be, and the same is hereby Denied.

It Is Also Ordered that the motion to stay or recall the mandate be the same is hereby Denied.

APPENDIX C

(a) The Court instructs the jury that the Defendant, Alfred John Supinsky, has plead the defense of entrapment.

The defense of entrapment is a good one in law and arises under certain circumstances where a defendant charged with unlawfully engaging in the business of dealing in firearms was not and had never been a dealer in firearms, had never sold any before, nor conceived an intention to do so, but was induced by the Government agent to sell to him, the whole transaction being a device of the Government agent who furnished the money to entrap, arrest and prosecute him, then the jury is instructed to find the Defendant not guilty.

(b) When the accused has never committed such an offense as that charged against him prior to the time of being charged, and never conceived any intention of committing the offense prosecuted, the fact that officers of the government incited and by persuasion and representation lured him to commit the offense charged, in order to entrap, arrest and prosecute him therefor, is fatal to the prosecution and entitles accused to a verdict of not guilty.

(c) The predisposition and criminal design of the Defendant are relevant and the controlling question is whether the Defendant is a person otherwise innocent whom the government is seeking to punish for an alleged offense which is the product of the creative activity of the government's officials.

APPENDIX D

[250] Q. When was this? A. The first occasion was on the date of January the 17th at Coonrod's Service Station.

Q. All right, what happened? Tell the jury what happened. Did someone call you? A. I was called by a Roy . . . I don't know his last name.

Q. Do you know what he looks like? A. He's fair-haired. By that I mean light brown. Slight built, probably in the neighborhood of 155, about five, eleven.

Q. Do you know what he did on that—during January of 1974? A. He was employed, to the best of my knowledge, as a driver for an escort service company which had offices either adjacent to or in the immediate area of this service station.

Q. Of Coonrod's Service Station? A. Yes, sir.

Q. Did you meet him through Coonrod? A. Yes, originally.

Q. How did that meeting take place or how did you meet him in the first place? A. During the period of the holidays that year, which **[251]** was December and January I'm speaking of, I frequented Coonrod's Service Station about three times a week as a social contact or as a sanitation dump east of his service station which I used in my roofing business, whenever I had any, as a dump. And I'd stop in and see Larry. On one of the occasions I met Roy.

Q. Do you know what Roy's last name is or his address now? A. I keep wanting to think it was Miller but I'm not sure.

Q. And in any event how many times had you met him prior to January? A. Prior to January the 17th I had met him on four or five occasions.

Q. And was that—did you do any specific thing or for any particular reason or just in meeting or just in conversation? A. He frequented the service station and used their facilities

in the back room of the station. They had a phone and it was more or less a commercial type station and drivers in and out needing phones, "and help yourself" attitude around the station. It was on that basis that I spoke to him on the these three or four occasions.

[252] Q. Did he have anything to do himself with Coonrod? A. To my knowledge only the fact that their company, the escort service, bought their gasoline, had their, you know, mechanical work maintained by Coonrod's station.

Q. Now, let me ask you this: with respect to the guns that on January the 17th that you say you delivered or gave to Mr. McCloskey, how did you come in possession of those? A. Originally I came in possession of those that I sold to McCloskey on the morning of the 17th in Granite City, and they were given to me by Roy.

Q. All right. How did it happen that you got those from Roy in Granite City? A. We had pre-arranged on a prior meeting three or four days prior to this that I was to sell a gun collection that he owned, and that by selling it he would give me twenty per cent, knowing that I was kind of down at the time and I had financial problems. And he offered to let me sell these guns for him as a way out for me to make a few dollars, and mentioned the fact that Dennis McCloskey was a gun freak, and that he would like to sell them to him himself but he couldn't get a top dollar price. He said he had experience in the past selling to him and proposed **[253]** that I sell them to him. He would tell me how much the guns would be and then I would hold firm with my prices and he was sure that Dennis, being a gun freak that he was, would buy the guns.

* * * * * * *

Q. Who is "we?" A. In one of our conversations at the service station after Roy discussed that he had a gun collection which he would like me to sell for him and I showed interest, he said "I'll take and show you the guns and we'll go over the prices and discuss how to handle the sale of them to Dennis."

He further said that Dennis was not wealthy or anything, but he thought that if we sold them to him **[254]** in stages that he would buy all that he had.

Q. This "Dennis" means Dennis McCloskey? A. Yes, sir. So we drove, oh, about the 13th or 14th of January in Roy's car.

Q. What kind of a car was it? A. It was a light colored four-door. I believe it was a Plymouth, about a '68 or '69. Drove in his car to—we drove toward Alton, Illinois, to the Hartford business district exit and made a right there and within a couple of blocks stopped and parked at a trailer, a house trailer. And Roy went into the house, told me that was a girl friend's place, that he was having marital problems and he was keeping his collection here.

* * * * * * *

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[291] **APPENDIX E**

Cross-Examination

By Mr. Schwartz

Q. Who is Roy Miller? A. He's an informant—he's an ex-informant of the Illinois Bureau of Investigation.

Q. Yesterday did you refer to him and use the terminology "informant?" A. I can't remember what . . . I believe I did.

Q. And at no time did you ever divulge his name; is **[292]** that right? A. That is correct.

Q. Up until just now. A. Yes, sir.

Q. Yesterday he was not an ex-informant but today he's an ex-informant; is that your testimony? A. No, sir. Yesterday he was an ex-informant.

Q. Yes, sir, but you didn't tell us about that; is that right? A. That's correct.

Q. All right. What does Roy Miller look like? A. He's about five foot, eight, nine, 165 pounds, brown hair, hazel eyes.

* * * * * * *

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[154] **APPENDIX F**

Mr. Schwartz: Secondly, Judge, at this time I would ask that the court in overruling or denying my motion to suppress the evidence, portions of that motion required and were asked of Officer McCloskey and would be asked of Officer Robben of the ATF who—what the name of the informant was in this case. There has been evidence in front of this jury and there has been testimony and statements that there was an informant in the case. The Government is still unwilling to inform—testimony was adduced that he was present during one of the so-called or alleged sales by Mr. Supinski. From that I feel he is a necessary and material witness to this case, and their withholding his name deprives me of an opportunity to examine and find out who this alleged or so-called necessary and material witness is. And not telling me who he is and not bringing him to the courtroom and not telling me who he is before this case is concluded or before we continue further, I think the defendant's rights are seriously prejudiced.

The Court: What do you have to say about that, Mr. Jenkins? Was he present during one of these sales or both of them?

Mr. Jenkins: I believe the testimony is that is true. He was present on both occasions, speaking of the 17th and 25th of January. Our position is simply that this need not be **[155]** divulged by the Government.

The Court: You don't intend to call him as a witness?

Mr. Jenkins: I do not.

The Court: Is that correct?

Mr. Jenkins: And if counsel would talk to his client, he could obtain the name of the witness. And he has the same power to call him that I do.

The Court: I think that is true. The rule that you don't have to name an informant is for the basic protection of an informant.

If he was present and is known to the defendant, certainly what you say is true.

I'm going to direct that you tell me, Mr. Schwartz, that you wish to call this man and I'll see that he is identified so that you may call him. But we are not going to play games here.

If you don't know who it is and can't otherwise call him and want to call him so that everybody who is present can be called to testify, we will see that he is identified but otherwise not, sir.

Mr. Schwartz: I think that it is germane to the issues in this case that I know the names and addresses of every material——

The Court: Will you ask your client?

Mr. Schwartz: Judge, that begs the issue.

The Court: The motion is overruled. Call the jury.

[156] Mr. Schwartz: I'm not finished and I don't know the fellow's name.

The Court: You are finished, sir, on this matter, Now will you take your place?

Mr. Schwartz: Can I make another motion with respect to another matter?

The Court: Well, yes. I ask you a question, sir. Answer it.

Mr. Schwartz: Judge, I did. I don't know the fellow's name.

The Court: Now, go ahead. I asked you to ask your client and you started telling me something else.

Mr. Schwartz: I don't know his name, Judge. I was just about to tell you that it is——

The Court: Does your client know his name?

Mr. Schwartz: No, I don't know what his name is.

The Court: Do you wish to call him?

Mr. Schwartz: Judge, let me say this, I've got to talk.

The Court: Start with the next matter.

Mr. Schwartz: I want to see who he is. If I talk to him, to see if I would call him.

The Court: Let's go on to the next matter.

* * * * * * *

[262] **APPENDIX G**

Q. All right. Did you then come back to Illinois at any time later in the day? A. I came back to Illinois about 4:00 o'clock that afternoon.

Q. Where did you go? A. I went directly to the Canal Restaurant where I was to meet Roy and Dennis.

Q. You didn't pick up the guns then at any time from Coonrod before that? A. No, sir.

Q. Then did you go—you went then to the Canal Restaurant. Did you meet somebody over there? A. I did.

Q. Who was that? A. I met with Roy, Dennis and a Negro who was introduced to me as Fred.

Q. Did you have a conversation then with McCloskey about these two rifles? A. I did.

Q. What was that conversation? A. He asked me if I had the guns. I told him no, that it was convenient and I would pick them up and I **[263]** could be back in a half hour if he had the money and was positively interested in them.

He said he was, that he had the money and would I go get the guns and meet them back there as quick as I could, which I agreed that I would do.

Q. Then what did you do? A. So then I went to Coonrod's station and got the two guns, the two rifles, the Westherby and the Seko, and put them in my truck.

I went to Granite City to return some tools to an uncle of mine that I promised that I would return that day that I had borrowed. Returned to the station approximately an hour after being with Roy and Dennis and went ahead with selling him the two guns.

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[163] **APPENDIX H**

Q. What were your duties on that time? A. I had the same duties. I was surveilling Agent McCloskey.

Q. Where did that occur? A. I arrived at the Canal Restaurant and parked on the southeast corner of the parking lot at approximately 5:20 p.m. and—correction, 4:20 p.m. and then I observed Agent McCloskey pull in just a few minutes later.

Q. Now, will you describe for the jury where in relation to Coonrod's Shell Station does Canal Motor—what did you say? Motel? A. It's a motel and restaurant.

Q. Where is that located? A. Larry Coonrod's station is on the southeast—or southwest corner of the intersection, and the Canal Motel is approximately five, six hundred feet west of that on the same side of the road, the south side of the road. [164] Q. Where were you parked at this time on January 25th? A. On the back part of the lot clear back in the southeast corner of the lot.

Q. Okay, and Agent McCloskey arrived. What kind of vehicle? A. He was driving a Dodge van, 1971 Dodge van.

Q. Did you observe any license plates on that vehicle? A. It had Illinois Recreational Vehicle plates. I don't know the number.

Q. You don't know the number? A. No.

Q. Now, what time was that? A. Approximately five minutes later, 5:25—or 4:25.

Q. After that arrival by Agent McCloskey what, if anything, did you observe? A. I observed him go into the Canal Restaurant. Mr. Supinski's green Chevrolet pick-up truck was already there. So they went inside the restaurant and I sat outside.

Q. Okay, and after this what, if anything, occurred? What did you observe? A. Approximately 5:05 p.m. I observed Mr. Supinski come out of the restaurant, enter his pick-up truck and then travel east on the Chain of Rocks Road to the intersection, make a left turn and travel north on Route 3.

Q. Going north on Route 3, where does that lead? A. That leads—approximately half a mile north of that [165] intersection is Interstate 270.

Q. When was the last time you saw it in the departure of the defendant at 5:05? When was the last time you saw his truck? A. At that time after he made the left turn, I observed him traveling north on Route 3.

Q. From your vantage point did you have the ability to observe this Route 270? A. Yes, sir.

Q. When did you next see the defendant? A. At approximately 6:00 p.m. I observed a truck resembling his traveling east on the Interstate and then I observed Mr. Supinski travel south on Route 3 coming up to the intersection, the Chain of Rocks Road on Route 3, make a right turn and go to the Canal Motel.

Q. Now, Interstate 270 at this particular intersection, Route 3, if you are traveling west on Interstate 270, where does that lead?

Mr. Schwartz: Objection, your Honor. Requires this witness to give a conclusion and hearsay testimony, and irrelevant and immaterial.

The Court: Objection overruled. He may answer if he knows where it leads.

A. It leads into North St. Louis.

[166] By Mr. Jenkins

Q. What state? A. Missouri.

Q. Okay. Now, if you are traveling east on Interstate 270, I assume there is a bridge to cross the river; is that correct? A. Yes, sir.

Q. Okay, if you are traveling east on Interstate 270 out of Missouri, what is the first exit off of that road? A. Illinois Route 3.

Q. And when did you observe—first observe the defendant—did you say at 6:00 o'clock? Is that correct? A. Six p.m., yes.

Q. Where did you observe him or his truck? A. I observed the truck that resembled his up on the Interstate. The Interstate is elevated above Route 3, and I had a set of binoculars and was looking for him. And then I observed Mr. Supinski just approximately 30 seconds later at the intersection of Route 3 and Chain of Rocks Road.

Q. And the truck you observed at that time, what was it? A. A 1970 green Chevrolet.

Q. That you had seen earlier on the 17th; is that correct? A. Yes, sir.

Q. Okay. What time was the return? A. Approximately 6:00 p.m.

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[91] **APPENDIX I**

The Court: Mr. Schwartz, you wanted to make a record with respct to something on voir dire examination?

Mr. Schwartz: I do, if your Honor please. Judge, the defendant would refer to two matters with respect to the voir dire examination. One is to the statement by the Court in inquiring of the jury panel whether or not they had any preconceived notions as to whether the defendant was guilty or innocent. I think that was an unfair statement to this jury as to what their proclivities might be in the case. The defendant is innocent until or unless he is proven guilty.

The Court: Well, sir, there isn't any law that the defendant is innocent and the jury has been instructed on the presumption of innocence and the jury will be further **[92]** instructed on the presumption of innocence. And I think you have made your point now. You don't have to argue it at this time.

Mr. Schwartz: All right, Judge. Secondly, the defendant, through counsel, would object to the method or manner in picking the veniremen.

Mr. Jenkins: I'm sorry, your Honor, I can't hear.

Mr. Schwartz: The defendant objects to the method and manner utilized by the court in picking the veniremen, for the reason that it requires this defendant to selectively exclude certain members of a jury panel that might otherwise be left on a panel and not having other members of the panel. I think that defendant is entitled to pick from a definitive number, to-wit, all those who were present here today. And I think finally that this defendant would have struck a member of the jury panel and left another member who might have been more receptive to what this defendant's position might be in this trial from the first group as I earlier indicated to the Court. The Court indicated to me that it would not allow me

to strike that member that I had left on the first panel and, therefore, I feel the defendant's rights have been violated and he has been prejudiced.

The Court: Well, Mr. Schwartz, you did not specify anybody for any particular reason, but I don't mean to indicate to you that you would have been permitted to strike after once **[93]** accepting a juror even if you had.

I believe a fair jury has been selected in this case, and I am satisfied that you have made your record, sir. We are not going to have a mistrial, if you are suggesting that.

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[181] **APPENDIX J**

By Mr. Jenkins

Q. Let me hand you what has been marked for identification as Government's Exhibit No. 13 and ask you if you can identify that, sir. A. Yes, sir, that is a .22 caliber that I bought about two years before it was stolen.

Mr. Schwartz: Judge, I'm going to object to that statement by the witness and ask that it be stricken and ask leave to approach the bench in this case.

The Court: What? The statement that two years before it was stolen?

Mr. Schwartz: Yes, sir, Judge.

The Court: Well, the motion is overruled. The man said he bought the gun and sometime before it was stolen.

By Mr. Jenkins

Q. How can you identify the weapon itself? A. Well, on this .22 I had an orange scope sight on it and I lost it and it is missing now. And I took good care of this gun. I had a mark here that I had to polish over, and it's right where it was when I had it.

Q. When was this weapon stolen?

[182] Mr. Schwartz: Judge, I'm going to object. That's a conclusion. It's irrelevant and immaterial. They are attempting to interject issues in this case which don't belong in it.

The Court: Sir, it seems to me that you are injecting the issues. I think the man knows if the gun that he owned was stolen. Now, that is not being connected in any way with your client.

Mr. Schwartz: But, Judge——

The Court: The motion is overruled, the objection is overruled. He may answer.

By Mr. Jenkins

Q. I think the question was when did you last see this gun. A. It was November 2nd, 1973.

Q. You saw it on that date? A. No, it was the Sunday before I went hunting.

Q. With this weapon? A. This weapon and a shotgun.

Q. What, if anything, occurred then on November 2nd of '73? A. Well, when I came home from work this was missing.

Q. Pardon me, you will have to speak up. A. When I came home from work around 8:00 o'clock I got home, and the house had been burglarized and the two—the shotgun and the .22 had been missing.

Q. This was November 2nd of '73? A. Right.

[183] Q. Have you seen this gun since? A. No.

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[101] **APPENDIX K**

Mr. Jenkins: Your Honor, marked for identification is Government's Exhibit No. 1, a certified and authenticated copy of record of the Alcohol, Tobacco and Firearms Bureau of the Department of Treasury, which the Government offers **[102]** in evidence at this time.

Mr. Schwartz: Judge, at this time the defendant would object to the introduction of that evidence. There has not been a proper foundation laid as to the nature of the exhibit, and I don't feel at this time it conforms to Rule 902.

The Court: Well, in what respect do you think it does not conform, sir?

Mr. Schwartz: Judge, it would not enable me or afford me an opportunity to cross-examine any person or persons to whom this particular exhibit was directed. Secondly, it refers to an individual—that of Al Supinski and Al Supinski has not been charged. Alfred John Supinski has been charged, and I don't see the relevance of this exhibit at this time.

The Court: Well, objection is overruled. Government's Exhibit No. 1 may be admitted.

(Whereupon document previously marked "Government's Exhibit No. 1" was admitted in evidence.)

Mr. Jenkins: Your Honor, I would ask the Court's permission to publish portions of this exhibit to the jury.

The Court: Well, brief portions.

Mr. Jenkins: (Reading) "I, Maxine H. Weiwora, am Chief of the Firearms Section for the Midwest Region, Bureau of Alcohol, Tobacco and Firearms, and am custodian of records relating **[103]** to applications for and issuance of firearms licenses under authority of 18 USC, Chapter 44.

"I hereby certify that after a diligent search of records in my custody, I can find no record that Al Supinski, 122 Coburg Drive, St. Louis, Missouri, ever applied for or was issued a license under the Gun Control Act of 1968."

The Court: Do you have a series of such exhibits, sir?

Mr. Jenkins: Yes, your Honor.

The Court: Will you hand them all to counsel and let's move along?

(Whereupon document hereinafter referred to as "Government's Exhibit No. 2" was marked for identification.)

Mr. Jenkins: Your Honor, marked for identification as Government's Exhibit No. 2, a similar record of the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms that the Government offers at this time.

The Court: Any objection?

Mr. Schwartz: Yes, your Honor. The defendant would object to the introduction of that record into evidence at this time, in that defendant believes there has been no proper foundation laid for the introduction of that exhibit. It does not conform to the rules, as I understand them, in Section 902. It refers to an individual Mr. McCloskey. It **[104]** contains certain legal conclusions in the document, to-wit, with respect to his residence which is the part of the proof in this case and certain other matters which we feel in the form as it is presented to the court at this time are conclusions and contain conclusions that must be proven beyond a reasonable doubt by the prosecution in this case.

The Court: Objection is overruled. Government's Exhibit No. 2 may be admitted.

(Whereupon document previously marked "Government's Exhibit No. 2" was admitted in evidence.)

Mr. Jenkins: This is more or less an identical exemplification by Mrs. Wiewora. It states, "I hereby certify that after a diligent search of records in my custody, I can find no record that Dennis McCloskey, Springfield, Illinois, ever applied for or was issued a license under the Gun Control Act of 1968."

Your Honor, marked for identification, a similar record from the Department of Treasury as Government's Exhibit No. 3.

(Document hereinabove referred to as "Government's Exhibit No. 3" was marked for identification.)

Mr. Jenkins: It is offered at this time.

Mr. Schwartz: Your Honor, the defendant would object to the **[105]** introduction of that into evidence.

The Court: On additional grounds other than stated?

Mr. Schwartz: None other than stated to the other two.

The Court: All right, objection will be overruled. Government's Exhibit No. 3 may be admitted.

The certificate is the same thing with respect to another individual?

Mr. Jenkins: Certificate is the same, the language is the same. The only difference is that the individual named is Gary Robben, Collinsville, Illionis.

The Court: All right, Government's Exhibit No. 3 is admitted.

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APPENDIX L

[109] Mr. Jenkins: Your Honor, marked for identification is Government's Exhibit No. 6, additional certified and authenticated copies of records of the Department of Treasury, Bureau of Alcohol, Tobacco and Firearms. It is offered by the Government at this time.

Mr. Schwartz: Your Honor, the defendant would ask to be able for purposes of the record to enumerate those same objections made specifically with respect to Government's Exhibits 1, 2, 3, I believe, which are substantially similar, and I might, after your Honor is finished, to ask to examine and read that second page, Judge.

The Court: You now wish to state an objection?

Mr. Schwartz: Yes, sir. Further, I would suggest that the second page of Government's Exhibit designated as No. 6 further **[110]** contains certain legal conclusions by the writer, John O. Bridgman in the first paragraph of the second page of this exhibit containing certain conclusions of law and being so made and in this form I will not be afforded apparently an opportunity to cross-examine that particular individual about his expertise and his ability to narrate on those particular sections of the law in this matter.

The Court: I don't for what purpose this is offered in evidence, Mr. Jenkins. It is the Court's responsibility to instruct as to what the law provides. I don't know why we should have a certificate of what the law provides from somebody in the Department of Justice.

Mr. Jenkins: Your Honor, I agree with that. We can excise that portion. It is offered simply for the lower paragraph's statement that that particular individual has searched the files and has found no record of any application for relief from disability of a felony—possession of firearm. As far as the legal portions at the top, we would be happy to . . .

The Court: It appears to me, Mr. Schwartz, that this recitation of the law is somewhat of a paraphrase. However, it is an accurate statement of the law. Do you consider it other than accurate?

Mr. Schwartz: Yes, your Honor. I think that it is inaccurate in the sense that it does not fully apprise the jury, as I know **[111]** your Honor will, what the law is under the circumstance and would serve only the purpose to highlight those sections of the law which the Government might want to highlight to this jury, and in that event differs from the other portions of the law and that which they may not be able to prove under this circumstance.

The Court: Well, it is the Court's responsibility to instruct as to the law, and it appears to the Court that this quotation from Section 925(c) of Title 18, United States Code, is accurate. However, in case of any considered conflict by the jury with this paragraph being conflict with any other instruction of the Judge, the jury is instructed that the instructions delivered by the Judge are to control. And this exhibit, Government's Exhibit 6, is admitted solely for the purpose of the statement with relation to the records of the Bureau of Alcohol, Tobacco and Firearms. On that basis the objection will be overruled. Government's Exhibit No. 6 may be admitted for that limited purpose.

Mr. Jenkins: Thank you, your Honor.

(Whereupon document previously marked "Government's Exhibit No. 6" was admitted in evidence.)

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